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13 Safeco Insurance Company of America  
14 and Liberty Mutual Insurance Company

15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF NEVADA**

17 LIBERTY MUTUAL INSURANCE  
18 COMPANY, a Massachusetts corporation;  
19 SAFECO INSURANCE COMPANY OF  
20 AMERICA, a Washington corporation,

21 Plaintiffs,

22 vs.

23 ADAM R. LEWIS, an individual; DUSTY A.  
24 LEWIS, an individual; ADAM LEWIS  
25 GRADING & EXCAVATION, LLC, a  
26 Nevada limited liability company,

27 Defendants.

28 CASE NO.: 2:11-cv-01274

**DEFAULT JUDGMENT**

29 The Court, having considered Plaintiffs Liberty Mutual Insurance Company's and Safeco  
30 Insurance Company of America's (collectively "Plaintiffs") Complaint against Defendants Adam  
31 R. Lewis, Dusty A. Lewis and Adam Lewis Grading & Excavation, LLC (collectively  
32 "Defendants"), the default entered against Defendants, and each of them, for failing to appear or  
33 otherwise respond to the Complaint despite proper service of same and the summons, and  
34 Plaintiffs' Application for Entry of Default Judgment against Defendants, including the  
35 accompanying Affidavit of J. Blake Wilcox ("Wilcox Affidavit") and all exhibits thereto, and the  
36 LASVEGAS 12542.1 103083.012

1 supporting Memorandum of Points and Authorities, and the Court being fully advised of the  
2 premises, finds as follows:

3       1. Plaintiffs issued the bonds identified in Exhibits C – M (the “Bonds”) to the  
4 Wilcox Affidavit on behalf of Wiser in the collective amount of \$131,066,210.00 (performance  
5 bonds + payment bonds + license bond) in connection with which Plaintiffs have received and  
6 continue to receive claims.

7       2. Wiser Construction, LLC’s declaration of bankruptcy and abandonment of its  
8 projects has required Plaintiffs’ to complete a number of projects and pay a substantial number of  
9 claims. In connection with these claims, Plaintiffs have been and will continue to be sued by  
10 Wiser’s subcontractors and suppliers seeking payment.

11       3. Plaintiffs have proven that they will incur the total amount of \$20,981,028.00 to  
12 resolve all bonded obligations under the Bonds that they issued on behalf of Wiser and  
13 Defendants in connection with bonded projects.

14       4. As of October 31, 2011, Plaintiffs have paid \$3,021,999.87 to investigate and  
15 resolve claims on the Bonds, which includes consultant and legal expenses investigating the  
16 status of the bonded projects and to investigate and resolve the claims and related litigation. As  
17 of this same date, Plaintiffs have received \$278,581.99 from the Bond obligees. Thus, as of  
18 October 31, 2011, Plaintiffs have paid the net amount of \$2,743,417.88 (\$3,021,999.87 -  
19 \$278,581) to resolve Bonded obligations as of October 31, 2011.

20       5. Under the terms of the Indemnity Agreements attached to the Wilcox Affidavit as  
21 Exhibits A and B, Defendants expressly agreed that an itemized summary of Plaintiffs’  
22 expenditures sworn to by an Officer of Plaintiffs, such as is contained in the Wilcox Affidavit, is  
23 *prima facie* evidence of the fact and amount of the loss, and Defendants’ liability to Plaintiffs.

1       6. Plaintiffs have proven to this Court's satisfaction that they will continue to incur  
2 additional costs, expenses and attorneys' fees, in the amount of \$20,981,028.00.00 for payments  
3 to complete the bonded projects, payments to subcontractors and suppliers, payments to  
4 Plaintiffs' own consultants and attorneys, and related expenses. Plaintiffs have proven to this  
5 Court's satisfaction that they will receive \$10,756,065.00 from the Bond obligees; therefore, this  
6 Court finds that the net amount of the bonded payment obligations that Plaintiffs will incur after  
7 October 31, 2011 is \$10,224,963.00 (\$20,981,028.00.00 - \$10,756,065.00).

9       7. Defendants are expressly, and presently, liable to Plaintiffs for \$10,224,963.00  
10 based upon their obligation to post collateral with Plaintiffs under the Indemnity Agreements.

11                   **Accordingly, IT IS HEREBY ORDERED THAT:**

12       1. Plaintiffs are awarded the following damages against Defendants, jointly  
13 and severally:

14                   a. \$2,743,417.88 for the net amount Plaintiffs have already incurred to  
15                    resolve bonded obligations as of October 31; and  
16                   b. \$10,224,963.00 for the net amount of the bonded payment  
17                    obligations that Plaintiffs will incur after October 31, 2011.  
18                   c. Accordingly, Plaintiffs are awarded the Judgment against  
19                    Defendants, jointly and severally, in the total amount of  
20                    \$12,968,380.88 (\$2,743,417.88 + \$10,224,963.00).

23                   ///

25                   ///

2. The total Judgment of \$12,968,380.88 against Defendants jointly and severally, and in favor of Plaintiffs shall, accrue post-judgment interest pursuant to 28 U.S.C. § 1961.

**DATED** this 21st day of December, 2011.

Gloria M. Navarro  
United States District Judge

*Order Prepared By:*

WATT, TIEDER, HOFFAR  
& FITZGERALD, L.L.P.

By David R. Johnson  
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**PROOF OF SERVICE**

1 I, Angie Oremus, declare:

2 I am a citizen of the United States and employed in Orange County, California. I am over  
 3 the age of eighteen years and not a party to the within-entitled action. My business address is  
 4 2040 Main Street, Suite 300, Irvine, California 92614. On November 23, 2011, I served a copy  
 5 of the within document(s):

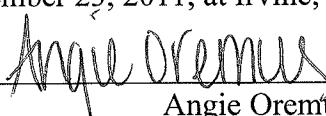
**PROPOSED DEFAULT JUDGMENT**

- 8  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
 9 forth below on this date before 5:00 p.m.
- 10  by placing the document(s) listed above in a sealed envelope with postage thereon  
 11 fully prepaid, the United States mail at Irvine, California addressed as set forth  
 below.
- 12  by placing the document(s) listed above in a sealed FEDERAL EXPRESS  
 13 envelope and affixing a pre-paid air bill, and causing the envelope to be delivered  
 to a Federal Express service agent for OVERNIGHT delivery.
- 14  by causing the document(s) listed above to be personally delivered to the person(s)  
 15 at the address(es) set forth below.
- 16  by transmitting via e-mail or electronic transmission the document(s) listed above  
 17 to the person(s) at the e-mail address(es) set forth below.

***SEE ATTACHED SERVICE LIST***

18 I am readily familiar with the firm's practice of collection and processing correspondence  
 19 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
 20 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
 21 motion of the party served, service is presumed invalid if postal cancellation date or postage  
 22 meter date is more than one day after date of deposit for mailing in affidavit.

23 I declare that I am employed in the office of a member of the bar of this court at whose  
 24 direction the service was made. Executed on November 23, 2011, at Irvine, California.

25   
 26 Angie Oremus

## **Service List**

*Liberty Mutual Insurance Company, et al. v. Adam R. Lewis, et al.*  
United States District Court, District of Nevada  
Case No. 2:11-cv-01274

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